

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FREDERICK W. SMITH, JR.,	§
	§ No. 26, 2011
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court of
	§ the State of Delaware, in and for
	§ New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 93007368DI
	§ C.A. No. N10M-12-109
Plaintiff Below-	§
Appellee.	§

Submitted: February 21, 2011

Decided: February 28, 2011

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 28th day of February 2011, it appears to the Court that:

(1) The petitioner-appellant, Frederick W. Smith, Jr., filed an appeal from the Superior Court's January 4, 2011 order denying his petition for a writ of habeas corpus. The respondent-appellee, the State of Delaware, has moved to dismiss/affirm the appeal on the basis of this Court's September 10, 2009 Order enjoining Smith from filing any future claims regarding his 1993 convictions without first requesting leave of the Court.¹

(2) On February 14, 2011, the Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing the appellant to show cause why the

¹ *Smith v. State*, Del. Supr., No. 259, 2009, Jacobs, J. (Sept. 10, 2009).

appeal should not be dismissed for his failure to comply with the Court's September 10, 2009 Order. The appellant filed his response to the notice to show cause on February 21, 2011. In the response, the appellant states that he was never informed that he could not file his appeal. He also states that the Superior Court's dismissal of his petition for a writ of habeas corpus was erroneous and should be reversed.

(3) We have reviewed the appellant's opening brief on appeal, as well as this Court's docket, in light of the September 10, 2009 Order and conclude that a) the appellant did not request leave of the Court to file his appeal; and b) if the appellant had requested leave to file his appeal, his request would have been denied, since the appeal falls squarely within that category of filings by the appellant that this Court deemed excessive, repetitious and abusive in its September 10, 2009 Order. As such, the Court concludes that this appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the within appeal is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice